Patriot Coal bankruptcy threatens thousands of US miners, retirees

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Around 2,000 active and retired miners and their supporters converged on the federal courthouse in St. Louis last week for the start of bankruptcy hearings for Patriot Coal. Patriot, which filed for Chapter 11 protection last summer, is attempting to use the proceedings to rid itself of health care and pension obligations for more than 1,650 active union miners and some 13,000 retirees. (See "Thousands of miners to lose health care, pensions in Patriot Coal bankruptcy")

Patriot has asked the court to modify its collective bargaining agreement with the United Mine Workers union and sanction "changes to wages, benefits and workrules for UMWA-represented employees."

"Unfortunately, Patriot simply does not have the financial resources to support its current benefit levels and will not survive without substantial changes across its cost structure," the company's court filings state.

Patriot currently operates 11 mining complexes in West Virginia and Kentucky producing both thermal coal for electricity generation and metallurgical coal for steel production. About half of the 24.9 million tons of coal produced by the company in 2012 was exported onto the global market. The St. Louis-based company employs about 4,100 workers, more than 1,650 of whom are members of the UMW.

Patriot is currently operating on an $800-million financing package from creditors and claims it needs to reduce its labor obligations by $150 million a year in order for the company to regain profitability. The company warns that if its restructuring plan is rejected by the court it will run out of cash by early 2014 and face liquidation.

The company attributes its bankruptcy to "exceptionally weak coal markets, coupled with increasing costs and unsustainable legacy liabilities" and claims it has done all it can to lower its operating costs outside of wrenching concessions from its unionized workers.

Last year the company idled some of it operations and laid off 1,250 miners—about one-fifth of its workforce. It also reached a settlement with environmentalist groups over its growing environmental cleanup liabilities, agreeing to phase out the company's use of mountaintop removal mining. (See "Patriot Coal to end mountaintop removal mining in West Virginia")

In a separate deal, the company reached a last-minute settlement in April with nearly 1,000 non-union salaried retirees after trying to terminate their health and life insurance benefits completely. According to Attorney Jon Cohen, who represented the salaried retirees, "They lost a significant portion of their benefits" in the deal.

However, all these efforts at cutting costs have not prevented the company from requesting approval for nearly $7 million in bonuses to about 350 salaried employees. If approved, about 225 employees would share in $1.75 million if certain financial, safety and environmental benchmarks are met by the company. Another 119 managers would get a cut of $5.2 million in retention bonuses depending on how long they stay with the company through the restructuring process.

Patriot and its creditors have been in ongoing negotiations with the UMW at least since November. In its latest offer, Patriot proposes ceasing its pension contributions and transferring its health care obligations to a Voluntary Employee Beneficiary Association (VEBA) trust controlled by the union. Under the plan, the company would make an initial contribution of $15 million in cash and up to $300 million in future profit-sharing contributions.

This would leave the health care trust fund grossly underfunded, with the company expecting retiree health care costs to reach $73.8 million this year alone. Because of the harsh toll coal mining takes on the human body and the unique health risks, such as black lung, faced by miners, any significant decline in health care coverage would immediately place thousands of retirees at risk for premature deaths.

The UMW, following the example of the United Auto Workers in Barack Obama's 2009 restructuring of the auto industry, would receive a 35 percent equity stake in the reorganized company as part of the VEBA scheme. This would give the UMW bureaucracy further incentive to cut the wages and retiree health care benefits of its own members, since this would save the trust fund money and drive up the value of the shares controlled by the UMW.

UMW President Cecil Roberts greeted the VEBA proposal as "a step forward by the company," but "nowhere near a fair and just agreement." In its latest counter-offer, the union has asked for a 57 percent stake in the reorganized company, a proposal Patriot has rejected.

Patriot and its creditors have also asked the court to investigate the 2007 creation of the company from Peabody Energy to see if the transaction "constituted an actual or constructive fraudulent transfer." The company is seeking power to subpoena Peabody's records regarding the spin-off, which allowed the world's largest private sector coal company to rid itself of "approximately $600 million of retiree health-care liabilities, along with hundreds of millions of dollars of other liabilities, including environmental reclamation obligations and black lung benefits."

Patriot Coal was created on October 31, 2007, when Peabody sold its union operations east of the Mississippi to the new company. While Patriot assumed 13 percent of Peabody's coal reserves, it inherited about 40 percent of the mining giant's health care liabilities.

In 2008, Patriot bought Magnum Coal, a similar spinoff of union operations from Arch Coal. Through the deal Patriot acquired 12 percent of Arch's assets and 97 percent of its retiree health care liabilities, further burdening the young company.

As a result, Patriot now has three times as many retirees as active miners, more than 90 percent who have never worked a day for the company. When retiree dependents are accounted for, the company is responsible for the health care of more than 23,000, a liability that has ballooned to $1.6 billion, the company complains.

Patriot has also filed suit against Peabody "to ensure that Peabody does not attempt to use Patriot's bankruptcy to escape Peabody's own health care obligations to certain retirees."

In a statement, Peabody explained it intended to do just that. "Patriot is taking the untenable position that our payments should continue in full in the future even if Patriot's expenses are reduced." Peabody insisted, "Should Patriot's benefit obligations decrease, our funding would proportionately be reduced."

In its motion to the court, the company explained that its "UMWA labor costs are not competitive with other coal producers that operate under more flexible workrules and a significantly lower labor cost structure."

"The Company can no longer afford to pay above-market wages and benefits to its 1,600 union employees as compared to its 1,300 nonunion miners doing exactly the same jobs. As part of the proposal, Patriot intends to offer its union employees the same health care benefits it provides to nonunion employees."

In other words, what Patriot is really seeking through its bankruptcy is the complete elimination of whatever remains of the gains won by coal miners through more than a century of bitter struggles. The outcome of the case will serve as a precedent for the further gutting of wages and working conditions in the mining industry and is no doubt being followed closely by other operators.

In response to this threat to its membership, the UMW bureaucracy has done nothing outside of a series of protest stunts and a "Fairness at Patriot" public relations campaign. In closing arguments Friday, the union's lawyer issued a hollow threat that the UMW would strike if the court allowed Patriot to void its contract.

Even if this highly unlikely action were taken, its aim would only be to preserve the institutional interests of the UMW, which has spent the last three decades suppressing the struggles of miners and collaborating with the coal companies in the downsizing and restructuring of the mining industry.

Judge Kathy Surratt-States is to issue a ruling on the case before May 29.